Work Place Respect:

Dealing with Inappropriate Employee Behavior

for

Utah Counties Indemnity Pool Personnel Workshop

May 9, 2013

Presentation by Susan Black Dunn

Dunn & Dunn, P.C.
505 East 200 South 2nd Floor
Salt Lake City, Utah 84102
Office Phone Number: (801) 521-6677
Office Fax Number: (801-521-9998
Cell Phone Number: (801) 879-6400
sblack@dunndunn.com

SUSAN BLACK DUNN has been a partner and shareholder at the Salt Lake City, Utah law firm of Dunn & Dunn, P.C. since 1998. She formerly was the Director of Equal Employment Opportunity and Diversity at American Stores Company. American Stores Company was a parent company with over 2,000 grocery and drug stores throughout the United States with over 130,000 employees. Prior to joining American Stores Company, Susan practiced law with the law firms of Black & Moore and Callister, Duncan & Nebeker.

Susan has expertise in various aspects of employment law including diversity, discrimination, harassment and workers compensation. She represents, consults with and provides education and training to many employers in the state of Utah in these areas. Susan received her B.A. from the University of Utah in Political Science and her J.D. from the S.J. Quinney School of Law at the University of Utah in 1982 where she was named a Leary Scholar for academic excellence. She also served as a Lyndon Baines Johnson Fellow in the United States House of Representatives.

RECENT DEVELOPMENTS:

EMPLOYMENT LAW SUMMARIES AND COURT DECISIONS

I. Statutes and Ordinances
   a. Federal Statutes
      i. Americans With Disabilities Amendments Act (ADAAA) (2008) (Public Law 110-325) – Took effect on January 1, 2009
         1. Background
            a. The ADAAA was passed in response to the Supreme Court rulings in *Sutton v. United Airlines*, 130 F.3d 893 (1999) and *Toyota Motor Mfg. KY v. Williams*, 224 F.3d 840 (2002). These rulings, taken together, imposed a strict standard for those claiming disability under the ADA:
               i. Impairments must be considered in their mitigated state.
               ii. The standard for determining disability must be demanding.
               iii. Individuals with impairments such as amputation, intellectual disabilities, epilepsy, Multiple sclerosis, HIV/AIDS, diabetes, muscular dystrophy, and cancer were often not qualifying for protection under the ADA.
         2. Significant Changes
            a. Clarifies and expands the ADA's definition of "disability"
               i. Physical or mental impairment that substantially limits one or more life activities; and either
               ii. A record of such impairment; or
               iii. Being recognized as having such an impairment.
            b. Deletes language used the Supreme Court to restrict the meaning and application of the Act.
            c. States that "disability" shall be construed in favor of a broad coverage of individuals under the Act.
            d. Prohibits consideration of mitigating measures in determining disability.

i. Also provides that impairments that are episodic or in remission must be assessed in their active state.

e. Provides additional direction on "major life activities" and "major bodily functions" that constitute disability
    i. "Major Life Activities" (non-exhaustive list)
        1. Caring for oneself;
        2. Performing manual tasks;
        3. Seeing;
        4. Hearing;
        5. Eating;
        6. Sleeping;
        7. Walking;
        8. Standing;
        9. Lifting;
        10. Bending;
        11. Speaking;
        12. Breathing;
        13. Learning;
        14. Reading;
        15. Concentrating;
        16. Thinking;
        17. Communicating; and
        18. Working.
    ii. "Major Bodily Functions" (non-exhaustive list)
        1. Functions of the immune system;
        2. Normal cell growth;
        3. Digestive functions;
        4. Bowel functions;
        5. Bladder Functions;
        6. Neurological functions;
        7. Brain functions;
        8. Respiratory functions;
        9. Circulatory functions;
        10. Endocrine functions; and
        11. Reproductive functions.
f. Removes the requirement that an individual must demonstrate that the impairment limits a major life activity that is *perceived to be substantial*.
g. The authority granted to federal agencies under the ADA includes the authority to issue regulations

implementing the definitions contained in Sections 3 and 4 of the ADA

h. Makes conforming amendments to Section 7 of the Rehabilitation Act of 1973 and Title I of the ADA itself.

ii. Genetic Information Nondiscrimination Act of 2008 (GINA) (Public Law 110-223) – Took Effect May 21, 2008

1. Provisions
    a. Prohibits group health plans and health insurers from denying coverage or charging higher premiums to healthy individuals based solely on the genetic predisposition to developing a disease in the future
    b. Bars employers from using genetic information in decisions regarding:
        i. Hiring;
        ii. Firing;
        iii. Job placement; or
        iv. Promotion
2. Arguments in Favor
    a. Helps advance personalized medicine
        i. Encourages continuing biomedical research
        ii. Helps ensure that patients are comfortable consenting to genetic diagnostic tests
    b. Helps prevent potential misuse of genetic information
        i. All humans have genetic anomalies
3. Arguments in Opposition
    a. Legislation is overly broad
    b. Might increase frivolous lawsuits and/or punitive damages
    c. Might force employers to offer health plan coverage of all treatments for genetically-related conditions, thus driving up costs

iii. Lilly Ledbetter Fair Pay Act of 2009 (Public Law 111-2) – Took Effect January 29, 2009

1. Background
    a. Reaction to *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), which held:
        i. 180-day statute of limitations in pay discrimination cases begins to run at the time that the pay was agreed upon, not at the time of the last paycheck
2. Provisions

a. Amendments to § 706(e) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-5(e))
    i. An unlawful employment practice occurs when:
        1. A discriminatory decision or other practice is adopted;
        2. An individual becomes subject to a discriminatory compensation decision or other practice; or
        3. An individual is affected by application of a discriminatory compensation decision or other practice (including each time wages, benefits or other compensation is paid)
    ii. Aggrieved party may obtain relief, including recovery of back pay, for up to two years preceding the filing of the charge
b. Amendments to § 7(d) of the Age Discrimination in Employment Act (29 U.S.C. § 626(d))
    i. An unlawful employment practice occurs when:
        1. A discriminatory decision or other practice is adopted;
        2. An individual becomes subject to a discriminatory compensation decision or other practice; or
        3. An individual is affected by application of a discriminatory compensation decision or other practice (including each time wages, benefits or other compensation is paid)

b. Utah Statutes
    i. Utah Antidiscrimination Act (U.C.A. §§ 34A-5-101 to -108) – Initially Enacted in 1965
        1. Prohibits employment discrimination on the basis of:
            a. Race;
            b. Color;
            c. National Origin;
            d. Gender;
            e. Religion;
            f. Age;
            g. Disability;

h. Pregnancy;
i. Childbirth; or
j. Pregnancy-related Conditions

c. Local Ordinances
   i. Counties with ordinances prohibiting employment and housing discrimination based on sexual orientation or gender identity
      1. Grand County
      2. Salt Lake County
      3. Summit County
   ii. Cities with ordinances prohibiting employment and housing discrimination based on sexual orientation or gender identity
      1. Logan
      2. Midvale
      3. Moab
      4. Murray
      5. Park City
      6. Salt Lake City
      7. Taylorsville
      8. West Valley City

II. Recent Developments
   a. Retaliation
      i. *Thompson v. North American Stainless, LP*, 2011 WL 197638 (2011) – Decided January 24, 2011
         1. Employee brought a Title VII action against his employer for retaliation, alleging that he was terminated after his fiancé, who also worked for the same employer, filed a gender discrimination charge with the EEOC. The U.S. Supreme Court, in an 8-0 decision, held that: (1) the employer's alleged act of firing the employee in retaliation against the fiancé, if proven, did constitute an unlawful retaliation under Title VII; (2) an "aggrieved" person under Title VII includes any person with an interest arguably sought to be protected by the statutes; and (3) the employee fell within the zone of interests protected by Title VII. Justice Scalia, writing for the Court, declined to set a bright-line standard for determining which employees fall within the "zone of interests" protected by Title VII, stating that evaluating acts of retaliation "will often depend upon the circumstances."
   b. Credit Histories
      i. *EEOC v. Kaplan Higher Education Corp.*, Civil Action No. 1:10-cv-02882 (N.D. Ohio 2010) – Filed December 22, 2010
         1. EEOC has alleged that Kaplan engaged in a pattern or practice of unlawful discrimination y refusing to hire a

class of black applicants nationwide based on their credit history. Kaplan contends that it conducts background checks on all applicants, regardless of race, and that the use of credit reports is a necessary component of its background checks into applicants who would be dealing with financial matters, such as financial aid, if hired. The EEOC alleges that this practice violates Title VII because it has a discriminatory impact on applicants due to their race and it is neither job-related nor justified by a business necessity.

c. Disability Discrimination
    i. *EEOC v. Supervalu, Inc.*, No. 09 CV 5637 (N.D. Ill. 2009)
        1. The EEOC alleged that Jewel-Osco, a subsidiary of the Defendant, refused to allow qualified employees with disabilities who were on authorized disability, or who were eligible for it, to return to work if they had any work restrictions, and to have terminated employees if they reached the one-year mark on leave. The EEOC also charged that the company refused to allow qualified employees with disabilities to be assigned to temporary light duty jobs unless they were injured on the job.
        2. On January 5, 2011, the Court signed a consent order resolving the case. Supervalu Inc. agreed to pay $3.2 million to the 110 aggrieved workers.
        3. This is one of the largest settlements under the ADA.
        4. Each worker will receive $29,000 apiece on average. This per-person award is the highest ever in a discrimination case involving the ADA.
d. Gender Discrimination
    i. *Heinemann v. City of Concord*, Case No. C09 03383 (Superior Court of the State of California in and for the County of Contra Costa 2009)
        1. The highest ranking woman in the Concord Police Department, a 22-year veteran of the force, alleged that she and other female officers were powerless in a "de facto hierarchy" that was based upon a "presumption of male supremacy." She claimed that the department was "rife with overt hostility and disparate treatment toward female officers."
        2. On January 25, 2011, it was announced that the city had agreed to pay Lt. Heinemann and her attorneys $150,000, plus a confidential amount to resolve her workers' compensation claim that was based on the same accusations.

3. In November 2010, the city settled another sexual harassment lawsuit brought by a former officer for $750,000.

e. Religious Discrimination
   i. *Bailey v. Anaheim Ducks Hockey Club LLC* (Superior Court of the State of California in and for the County of Orange 2011) – Filed on January 25, 2011
      1. Jewish hockey player sued the Anaheim Ducks and the Bakersfield Condors (an ECHL affiliate of the Ducks), alleging that his coaches made repeated anti-Semitic remarks, discriminated against him because of his religion, and denied him playing time because he was Jewish. His Complaint includes claims for religious discrimination, harassment based on religion, retaliation, failure to prevent harassment and discrimination, constructive termination and intentional infliction of emotional distress.

III. Case Law
   a. Federal Cases
      i. Application of ADAAA
         1. *Strolberg v. U.S. Marshals Service*, 2010 WL 1266274 (D. Idaho 2010)
            a. The provisions of the ADAA were not intended to be applied retroactively, and could not be used to determine claims of discrimination based on disability that took place prior to January 1, 2009.
         2. *Rickert v. Midland Lutheran College*, 2009 WL 2840528 (D. Neb. 2009)
            a. College volleyball coach brought claims of employment discrimination under both the ADAAA and the ADEA. The District Court held that the ADAA claims were barred, as the events leading up to the claim all took place prior to January 1, 2009, when the ADAA went into effect. Under the original provisions of the ADA, the Plaintiff failed to demonstrate a prima facie case of discrimination based on disability. And while the Plaintiff did establish a prima facie case for discrimination based on age, the Defendant was able to prove that it had legitimate, nondiscriminatory reasons for terminating the coach.
      ii. Application of GINA – As this is a recent law, there is not a lot of case law interpretation at this time

1. *Benoit v. Pennsylvania Bd. Of Probation and Parole – West Div.*, 2010 WL481021 (E.D. Pa. 2010)
    a. Pro se Plaintiff made claims of discrimination under the Civil Rights Act of 1964, ADEA, ADA and GINA, among others. The Plaintiff failed to offer any substantiation for these claims, and the District Court dismissed the Complaint for failing to state a claim upon which relief could be granted. The Court did grant the Plaintiff 20 days to re-file an Amended Complaint.
2. *E.E.O.C. v. City of Greensboro*, 2010 WL 5169080 (M.D. N.C. 2010)
    a. This case does not involve claims made under the GINA. In granting Defendant's motion for summary judgment, the District Court does discuss the requirements for retaining business records under both the ADA and GINA, stating that records such as requests for reasonable accommodations, application forms and other records pertaining to hiring, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship must be kept for at least one year after they are made.

iii. Application of Lilly Ledbetter Fair Pay Act
1. *Noel v. The Boeing Company*, 622 F.3d 266 (3rd Cir. 2010)
    a. Machinist for Boeing brought suit under the Civil Rights Act of 1964 for employment discrimination, claiming that he was passed over for promotion in favor of white employees. In analyzing the impact of the Fair Pay Act, the Third Circuit Court held that the Act did not apply to the Plaintiff's Title VII failure-to-promote claim, because the Plaintiff failed to demonstrate any nexus between the failure to promote and his disparate compensation. In addition, he failed to demonstrate that he received less pay than his white coworkers for performing the same work at the same grade level.

iv. Associational Discrimination
1. *Barrett v. Whirlpool Corp.*, 556 F.3d 502 (6th Cir. 2009)
    a. In February 2009, the Sixth Circuit published a favorable decision in a Title VII associational discrimination case in which the EEOC participated as amicus curiae. According to the lawsuit, three

White workers at the Whirlpool plant in LaVergne, Tennessee, witnessed numerous instances of racial hostility and slurs directed at their Black coworkers. Because they maintained friendly relationships with, and engaged in various acts of advocacy on behalf of, their Black coworkers, they became targets of various threats and harassment by other White employees who were responsible for the racial hostility directed against their Black colleagues. The hostile conduct ranged from "cold shoulder" type behavior to the use of the term "nigger lover," references to the KKK, and direct threats on their lives, as well as being told to "stay with their own kind." The Sixth Circuit Court of Appeals affirmed in part, reversed in part, and remanded the district court's decision granting summary judgment to the defendant on the White plaintiffs' Title VII claims alleging that they were subjected to a racially hostile work environment based on their association with their Black coworkers. Agreeing with the position taken by the Commission as amicus curiae, the court of appeals held that there is no prerequisite degree or type of association between two individuals of different races in order to state a claim for associational discrimination or harassment, so long as the plaintiff can show that she was discriminated against because of her association with a person of a different race. The court of appeals also held that no particular degree or type of advocacy on behalf of individuals of a different race is required to state an associational discrimination claim based on this theory, again, so long as a plaintiff can show that she was discriminated against based on her advocacy on behalf of such individuals.

2. *EEOC v. Fire Mountain Restaurants LLC, d/b/a Ryan's Family Steakhouse*, No. 5:08-cv-00160-TBR (W.D. Ky. 2009)
    a. In June 2009, a restaurant, which was accused of creating a hostile work environment for Black, White, and female employees, settled an EEOC lawsuit for $500,000 and specific relief. According to the lawsuit, White employees were harassed because of their association with Black coworkers and family members, including being referred to as

"n----r lovers" and "race traitors" by White managers. Additionally, Black workers were terminated because of their race, female workers were subjected to a sex-based hostile work environment, which included male managers making sexual advances and calling them gender-related epithets such as "b-----s.", and all complainants suffered retaliation for reporting the discrimination.

v. Code Words

1. *EEOC v. Area Temps, Inc.*, No. 1:07cv2964 (N.D. Ohio 2010)
    a. In July 2010, one of the largest temporary placement agencies in Greater Cleveland area agreed to pay $650,000 to settle an employment discrimination lawsuit brought by the EEOC. The EEOC alleged that the temp agency violated federal law by matching workers with companies' requests for people of a certain race, age, gender and national origin and illegally profiling applicants according to their race and other demographic information using code words to describe its clients and applicants. The code words at issue included "chocolate cupcake" for young African American women, "hockey player" for a young White male, "figure skater" for White females, "basketball player" for Black males, and "small hands" for females in general.
2. *EEOC v. GMRI, Inc., d/b/a Bahama Breeze*, No. 1:08cv2214 (N.D. Ohio 2009)
    a. In December 2009, a national restaurant chain settled a racial harassment lawsuit brought by EEOC for $1.26 million and significant remedial relief in a case alleging repeated racial harassment of 37 Black workers at the company's Beachwood, Ohio location. In its lawsuit, the EEOC charged that Bahama Breeze managers committed numerous and persistent acts of racial harassment against Black employees, including frequently addressing Black staff with slurs such as "n----r," "Aunt Jemima," "homeboy," "stupid n----r," and "you people." Additionally, managers allegedly imitated what they perceived to be the speech and mannerisms of Black employees, and denied them breaks while allowing breaks to White employees.

Despite the employees' complaints to management, the alleged race-based harassment continued. The three-year consent decree resolving the litigation contains significant injunctive relief requiring Bahama Breeze to update its EEO policies nationwide, provide anti-discrimination and diversity training to its managers and employees, and provide written reports regarding discrimination complaints.

vi. Disability

1. *EEOC v. Eckerd Corporation d/b/a Rite Aid*, Civil Action No. 1:10-cv-2816-JEC (N.D. Ga. 2010) – Filed September 9, 2010
    a. Cashier worked for Rite Aid for 18 years. Due to severe arthritic symptoms in her kneed, which limited her ability to walk and stand for long periods, she periodically used a stool while stationed behind the counter. She had been allowed to use the stool by her employer since 2001. In January 2009, a new district manager was assigned to her store and decided that the employer would no longer accommodate the cashier's disability because he "did not like the idea" that she used a stool. The cashier was terminated several weeks later because the manager refused to accommodate her disability "indefinitely." Employee alleges this violates employer's obligation to provide reasonable accommodation for her disability.
2. *EEOC v. Fisher, Collins & Carter*, Case No. 10-cv-2453 (D. Md. 2010) – Filed September 9, 2010
    a. Employer requested all employees respond to a questionnaire regarding their health conditions, medical issues and medications. Shortly thereafter, two employees were discharged after disclosing that they had diabetes and hypertension. One employee had worked for the company for 15 years. The other employee had worked for the company for 8 years. Throughout their employment, the two employees had successfully performed their jobs. Employees allege that the termination violates the ADA's purpose of eliminating discrimination for people with disabilities who are qualified to do the job.

3. *EEOC v. IPC Print Services*, Case No. 10-cv-886 (W.D. Mich. 2010) – Filed September 9, 2010
    a. Employee, who had worked as a machinist for over 10 years, went on medical leave in 2008 to undergo chemotherapy treatment for cancer. In January 2009, employee asked to continue working part-time while he completed chemotherapy. Employer discharged him for exceeding the maximum hours of leave allowed by company policy. Employee alleges termination violates employer's obligation to provide reasonable accommodation for his disability.

vii. Discriminatory Customer/Patient Preference
1. *Chaney v. Plainfield Healthcare Center*, No. 09-3661 (7th Cir. 2010)
    a. In July 2010, Plaintiff Brenda Chaney and the EEOC as amicus curiae obtained a reversal of a summary judgment in favor of an employer in a Title VII case that "pit[ted] a [Black] health-care worker's right to a non-discriminatory workplace against a patient's demand for [W]hite-only health-care providers." In this race-based action, an Indiana nursing home housed a White resident who did not want any assistance from Black health-care staff. The facility complied with the patient's request by informing Plaintiff "in writing everyday that 'no Black' assistants should enter this resident's room or provide her with care." Plaintiff filed suit alleging that the facility's acquiescence to the racial biases of its residents is illegal and created a hostile work environment. She also asserted that her termination was racially motivated. On appeal, the Seventh Circuit unanimously rejected the facility's argument that Indiana's patient-rights law permitted such practice and remanded the case for trial because the "the racial preference policy violates Title VII by creating a hostile work environment and because issues of fact remain over whether race motivated the discharge."

viii. Discriminatory Hiring Practices
1. *EEOC v. Franke, Inc., d/b/a/ Franke Foodservice Systems*, No. 3:08-cv-0515 (M.D. Tenn. 2009)
    a. In March 2009, a manufacturer and distributor of foodservice equipment has offered permanent

employment to an African American applicant and furnished other relief to resolve a race discrimination lawsuit alleging that the company refused to hire the Black applicant into a permanent position at its Fayetteville, Tenn., facility because he disclosed a felony conviction on his application – even though the company hired a White applicant a year earlier who made a similar disclosure.

2. *EEOC v. Peabody W. Coal Co.*, Civil No. 06-17261 (9th Cir. 2010)
    a. In June 2010, the EEOC obtained a ruling by the Ninth Circuit that permits the Commission to pursue injunctive relief to stop a coal company mining in the Navajo Nation from discriminating in employment against non-Navajo Indians. In this Title VII case, EEOC claimed mineral lease provisions that require companies mining on the Navajo reservation in Arizona to give employment preferences to Navajos are unlawful. By honoring those provisions and refusing to hire non-Navajo Indians, Peabody discriminates based on national origin, in violation of Title VII of the 1964 Civil Rights Act, EEOC asserted. EEOC also can proceed with efforts to secure an injunction against future enforcement of the Navajo hiring preference, the court added. Should a court find a Title VII violation and issue such an injunction, Peabody and the Navajo Nation could file a third-party complaint against the Interior Secretary under Rule 14(a) to prevent the Secretary from seeking to enforce the lease provisions or cancel the leases, it said.
3. *EEOC v. Scrub, Inc.*, Civil Action No. 09 C 4228 (N.D. Ill. 2009)
    a. In July 2009, EEOC filed a lawsuit against a Chicago janitorial services provider, alleging that the company violated federal law by discriminating against African Americans in hiring. The Commission's administrative investigation revealed that, although African American workers were a significant segment of Scrub's labor market and applied for jobs in large numbers, they consistently made up less than two percent of Scrub's work force.

ix. Hispanic Preference
    1. *EEOC v. Little River Golf, Inc.*, No. 1:08CV00546 (M.D. N.C. 2009)
        a. In August 2009, a Pinehurst, N.C.-based support services company for condominium complexes and resorts paid $44,700 and will furnish significant remedial relief to settle a race and national origin discrimination lawsuit, alleging the company unlawfully discharged six housekeepers because of their race (African American) and national origin (non-Hispanic) and immediately replaced them with Hispanic workers.
    2. *EEOC v. West Front Street Foods, d/b/a Compare Foods*, No. 5:08-cv-102 (W.D. N.C. 2009)
        a. In May 2009, a Statesville, NC grocery store agreed to settle for $30,000 a lawsuit alleging that it had fired a White, non-Hispanic meat cutter based on his race and national origin and replaced him with a less-qualified Hispanic employee. In addition, the store has agreed to distribute a formal, written anti-discrimination policy, train all employees on the policy and employment discrimination laws, and send reports to the EEOC on employees who are fired or resign.

x. Hostile Work Environment
    1. *Armstrong v. Whirlpool Corp.*, No. 08-6376 (6th Cir. 2010)
        a. In January 2010, the Sixth Circuit affirmed in part and reversed in part a district court's decision granting summary judgment to defendant Whirlpool Corporation in a racial hostile work environment case in which the EEOC participated as amicus curiae. The alleged racial harassment largely involved a serial harasser who continually used racial slurs, including various permutations on "n----r," made references to the Ku Klux Klan openly and on a daily basis, and left a threatening message on a coworker's husband's answering machine. Other racially hostile incidents included White coworkers displaying the Confederate flag on their clothing and tow motors, threatening racial violence, making repeated references to the KKK and the n-word, telling of racist jokes, remarking that they wished they had a "James Earl Ray Day" as a holiday, and "laughing and talking

about the Black guy that got drugged [sic] behind a truck in Texas[,] ... saying he probably deserved it." Several of the Black plaintiffs also testified about the presence of racial graffiti in the plant bearing similar messages, including "KKK everywhere," "go home sand niggers," and "Jesus suffered, so the n---rs must suffer too, or ... Blacks must suffer, too."

2. *EEOC v. Big Lots, Inc.*, CV-08-06355-GW(CTx) (C.D. Cal. 2010)
    a. In February 2010, Big Lots paid $400,000 to settle a race harassment and discrimination lawsuit in which the EEOC alleged that the company took no corrective action to stop an immediate supervisor and co-workers, all Hispanic, from subjecting a Black maintenance mechanic and other Black employees to racially derogatory jokes, comments, slurs and epithets, including the use of the words "n----r" and "monkey," at its California distribution center.
3. *EEOC v. Ceisel Masonry*, No. 06 C 2075 (N.D. Ill. 2009); *Ramirez v. Ceisel Masonry*, No. 06 C 2084 (N.D. Ill. 2009)
    a. In May 2009, a masonry company agreed to pay $500,000 to settle a Title VII lawsuit alleging race and national origin harassment of Hispanic employees. The suit charged that the foremen and former superintendent referred to the company's Latino employees with derogatory terms such as "f---ing Mexicans," "pork chop," "Julio," "spics," "chico" and "wetback." In addition, former employees alleged that Hispanic workers were routinely exposed to racist graffiti, which the company never addressed. The three-year decree enjoins the company from future discrimination and retaliation on the basis of race or national origin and mandates anti-discrimination and investigation training for all of its employees and supervisors.
4. *EEOC v. E&D Services, Inc.*, No. SA-08-CA-0714-NSN (W.D. Tex. 2009)
    a. In August 2009, a Mississippi-based drilling company agreed to pay $50,000 to settle a Title VII lawsuit, alleging that four employees, three White and one Black, experienced racial harassment and retaliation while assigned to a remote drilling rig in

Texas. The harassment included being subjected to racial taunts and mistreatment from Hispanic employees and supervisors and having their safety threatened because the supervisors conducted safety meetings in Spanish only and refused to interpret for them in English. Told that they needed to learn Spanish because they were in South Texas, the employees said that instead of addressing their complaints of discrimination, they were fired. The company agreed to establish an effective anti-discrimination policy and to provide anti-discrimination training to its employees.

5. *EEOC v. Nordstrom, Inc.*, No. 07-80894-CIV-RYSKAMP/VITUNAC (S.D. Fla. 2009)
    a. In April 2009, high-end retailer Nordstrom settled an EEOC lawsuit alleging that it permitted the harassment despite complaints by Hispanic and Black employees about a department manager who said she "hated Hispanics" and that they were "lazy" and "ignorant" and that she didn't like Blacks and told one employee, "You're Black, you stink." Under the terms of the settlement, Nordstrom will pay $292,000, distribute copies of its anti-discrimination policy to its employees, and provide anti-harassment training.
6. *EEOC v. NPMG, Acquisition Sub, LLC*, No. CV 08-01790-PHX-SRB (D. Ariz. 2009)
    a. In September 2009, a Phoenix credit card processing company agreed to pay $415,000 and furnish significant remedial relief to settle a race harassment lawsuit, in which the EEOC charged that the company subjected a group of African American workers to racial slurs and epithets. According to one discrimination victim: "My supervisors often referred to my fellow African-American employees and me as 'n-----rs' and 'porch monkeys' and forced us to play so-called 'Civil War games' where employees were divided into North and South. They also referred to Black children or mixed-race children as 'porch monkeys' or 'Oreo babies.' On several occasions, I was told to turn off my 'jigaboo music."
7. *EEOC v. Pace Service, L.P.*, No. 4:08cv2886 (S.D. Tex. 2010)

a. In April 2010, a Houston-area construction company paid $122,500 and will provide additional remedial relief to resolve a federal lawsuit alleging race, national origin and religious discrimination. The EEOC's lawsuit alleged that the company discriminated against Mohammad Kaleemuddin because he is of the Islamic faith and of East Indian descent, and against 13 other employees because they are Black or Hispanic when a supervisor referred to Kaleemuddin as "terrorist," "Taliban," "Osama" and "Al-Qaeda," to the Black employees as "n----s" and to Hispanics as "f-----g Mexicans." In addition to monetary relief, the consent decree required the owner to provide a signed letter of apology to Kaleemuddin and that the alleged harassing manager alleged be prohibited from ever working again for the company. The company will also provide employee training designed to prevent future discrimination and harassment on the job.

8. *EEOC v. Professional Building Systems of North Carolina, LLC*, Civil Action No. 1:09-cv-00617 (M.D. N.C. 2010)
    a. In April 2010, the EEOC settled its lawsuit against Professional Building Systems for $118,000 and significant non-monetary relief after it had identified at least 12 Black employees who had been subjected to racial harassment there. According to the EEOC's complaint, at various times between mid-2005 and 2008, Black employees were subjected to racial harassment that involved the creation and display of nooses; references to Black employees as "boy" and by the "N-word"; and racially offensive pictures such as a picture that depicted the Ku Klux Klan looking down a well at a Black man. In its complaint, the EEOC alleged that the managers of the company not only knew about the harassment and took no action to stop or prevent it, but also that a manager was one of the perpetrators of the harassment.
9. *EEOC v. S&H Thompson, Inc., d/b/a Stokes-Hodges Chevrolet Cadillac Buick Pontiac GMC*, (S.D. Ga. 2010)
    a. In January 2010, a Georgia car dealership agreed to pay $140,000 to settle a race discrimination suit. In this case, the EEOC alleged that a White consultant

visited the car dealership three to four times a week and never missed an opportunity to make racially derogatory comments towards the Black sales manager and almost always in the presence of other people. After the Black sales manager complained about the derogatory comments, two White managers asked the consultant to stop his discriminatory behavior. The consultant ignored their requests to cease and continued to make the derogatory comments at every opportunity. The dealership denied any liability or wrongdoing but will provide equal employment opportunity training, make reports, and post anti-discrimination notices.

xi. Job Segregation
    1. *EEOC v. John Wieland Homes and Neighborhoods, Inc.*, No. 1-09-cv-1151 (N.D. Ga. 2010)
        a. In June 2010, EEOC and an Atlanta home builder settled for $378,500 a suit alleging the company unlawfully discriminated by assigning Black sales employees to neighborhoods based on race, failing to promote African Americans or women to management, and harassing an employee who complained.
    2. *EEOC v. Papermoon-Stuart, Inc.*, No. 0:09-cv-14316 (S.D. Fla. 2009)
        a. In September 2009, EEOC sued a Virginia-based entertainment club and its related companies for allegedly subjecting two Black doormen to segregated assignments that forced them to work in the back instead of at the club entrance, to offensive racial slurs, and to complaints by managers that "[B]lack music makes the club look bad." According to the suit, company managers did not stop the racial harassment and, instead, either forced out or fired those who complained.

xii. Race/Age Discrimination
    1. *EEOC v. Spencer Reed Group*, No. 1:09-CV-2228 (N.D. Ga. 2010)
        a. In June 2010, the Equal Employment Opportunity Commission and a Kansas-based national employment staffing firm settled for $125,000 a case on behalf of a White, 55-year-old former employee who allegedly was treated less favorably

than younger Black colleagues and fired when she complained. According to the Commission's lawsuit, the staffing company unlawfully discriminated against a senior functional analyst, who was the oldest employee and only Caucasian in the department, because of her race and age in violation of Title VII and the ADEA when a young, African American supervisor subjected her to different treatment and terminated her when she complained.

xiii. Race/Gender Discrimination

1. *EEOC v. Whirlpool Corp.*, Civil Action No. 3:06-0593 (M.D. TEnn. 2009)
    a. In December 2009, EEOC won a court judgment of over $1 million against Whirlpool Corporation in a race and sex discrimination case. During the four-day trial, the evidence showed that a Black female employee reported escalating offensive verbal conduct and gestures by her White male coworker over a period of two months before he physically assaulted her at the Tennessee-based facility; four levels of Whirlpool's management were aware of the escalating harassment; Whirlpool failed to take effective steps to stop the harassment; and the employee suffered devastating permanent mental injuries that will prevent her from working again as a result of the assault and Whirlpool's failure to protect her.

xiv. Retaliation

1. *EEOC v. Mountaire Farms of North Carolina Corp.*, Civil Action No. 7:09-CV-00147 (E.D. N.C. 2009)
    a. In September 2009, EEOC filed a lawsuit against a North Carolina poultry processor, alleging that it engaged in unlawful retaliation when it gave an African American employee an unjustifiably negative performance evaluation shortly after she filed two internal complaints with management about her White supervisor's use of racially offensive language about her and in her presence and when it discharged her two weeks after she filed an EEOC charge because of her dissatisfaction with the company's response to her discrimination complaints.

xv. Systemic Racial Discrimination

1. *EEOC v. Albertsons LLC*, Civil Action No. 06-cv-01273, No. 06-cv-00640, and No. 08-cv-02424 (D. Colo. 2009)
    a. In December 2009, a national grocery chain paid $8.9 million to resolve three lawsuits collectively alleging race, color, national origin and retaliation discrimination, affecting 168 former and current employees. According to the lawsuits, minority employees were repeatedly subjected to derogatory comments and graffiti. Blacks were termed "n-----s" and Hispanics termed "s---s;" offensive graffiti in the men's restroom, which included racial and ethnic slurs, depictions of lynchings, swastikas, and White supremacist and anti-immigrant statements, was so offensive that several employees would relieve themselves outside the building or go home at lunchtime rather than use the restroom. Black and Hispanic employees also were allegedly given harder work assignments and were more frequently and severely disciplined than their Caucasian co-workers. Lastly, EEOC asserted that dozens of employees complained about the discriminatory treatment and harassment and were subsequently given the harder job assignments, were passed over for promotion and even fired as retaliation.
2. *EEOC v. Area Erectors, Inc.*, Civil Action No. 1:07-cv-02339 (N.D. Ill. 2009)
    a. In May 2009, an Illinois construction company agreed to pay $630,000 to settle a class action race discrimination suit, alleging that it laid off Black employees after they had worked for the company for short periods of time, but retained White employees for long-term employment. The three-year consent decree also prohibits the company from engaging in future discrimination and retaliation; requires that it implement a policy against race discrimination and retaliation, as well as a procedure for handling complaints of race discrimination and retaliation; mandates that the company provide training to employees regarding race discrimination and retaliation; and requires the company to provide periodic reports to the EEOC regarding layoffs and complaints of discrimination and retaliation.

xvi. Terms and Conditions

1. *EEOC v. Material Resources, LLC, d/b/a Gateway Co-Packing Co.*, No. 3:08-245-MJR (S.D. Ill. 2009)
    a. In August 2009, a Washington Park, Ill., packaging and warehousing company agreed to pay $57,500 and provide training to settle a race discrimination and retaliation lawsuit alleging that the company failed to provide a Black employee the pay raise and health insurance coverage provided to his White co-workers, and then fired him in retaliation for filing a charge of race discrimination with the EEOC.
2. *EEOC v. Noble Metal Processing, Inc.* No. 2:08-cv-14713 (E.D. Mich. 2010)
    a. In June 2010, a Warren, Mich., automotive supplier paid $190,000 to settle a race discrimination and retaliation lawsuit in which the EEOC alleged that the supplier repeatedly overlooked qualified non-White employees, including a group of Black employees and a Bangladeshi employee, for promotions to the maintenance department. In addition, a White employee who opposed this type of race discrimination and complained that managers in the maintenance department were using racial slurs allegedly was fired shortly after the company learned of his complaints.
3. *EEOC v. Race, LLC, d/b/a Studsvik, LLC*, Civil Action No. 2:07-cv-2620 (W.D. Tenn. 2009)
    a. In December 2009, a Tennessee company that processes nuclear waste agreed to settle claims by the EEOC that Black employees were subjected to higher levels of radiation than others. Specifically, the EEOC alleged that, in addition to paying them less and permitting a White manager to refer regularly to them with the N-word and other derogatory slurs, such as "boy," the company manipulated dosimeters of Black employees assigned to work with radioactive waste to show lower levels of radiation than the actual ones. Under the agreement, 23 Black employees will receive $650,000.
4. *Frazier v. United States Department of Agriculture*, EEOC Appeal No. 0120083270 (2009)

a. In June 2009, the EEOC overturned an AJ's finding of no discrimination in a Title VII race discrimination case. Complainant alleged he was discriminated against on the bases of race (African-American) and retaliation when he was not selected for an of four vacant Risk Management Specialist positions. Complainant applied for the position, was rated as qualified, interviewed for the position, and was not selected. All four of the selectees were White. The agency found no discrimination and complainant appealed. The Commission found that the agency failed to provide a legitimate, non-discriminatory reason for the non-selection. The agency stated that the selectees were chosen because their skills and qualifications fit the agency's needs. The Commission found that the agency's reasons were not sufficiently clear so that complainant could be given a fair opportunity to rebut such reasons. The Commission also noted that the agency did not produce any rating sheets from the interview panel, and that complainant appeared to possess similar qualifications to the other selectees. Thus, the Commission found that the prima facie case and complainant's qualifications, combined with the agency's failure to provide a legitimate, nondiscriminatory reason for complainant's non-selection, warranted a finding of race discrimination. Because of this finding, the decision found it unnecessary to address the basis of retaliation. As remedies, the agency was ordered to place complainant into the Risk Management Specialist position with back pay and consideration of compensatory damages, EEO training to responsible agency officials, consideration of discipline for responsible agency officials, attorneys fees order, and posting notice.

5. *Thalamus Jones v. United States Department of Energy*, EEOC Appeal No. 0720090045 (2010)
    a. In March 2010, the EEOC upheld an Administrative Judge's determination that a federal agency discriminated against a Black employee on the basis of race when it terminated the complainant's participation in a training program. The record

showed that complainant was not rated as "marginal" and that the Manager who made the decision to terminate complainant conceded that complainant passed all required tests. Further, the Manger did not consult with the instructors before making the decision, but instead relied upon one individual who was clearly hostile toward complainant and who the AJ found was not credible. Additionally, the environment was not favorable to Black recruits. Two witnesses testified that they heard someone remark "one down and two to go" when complainant turned in his equipment following his termination. At that time, there were only three Black students in the 31-person class. One week before the class was to graduate, the third and last Black student was removed from the program. The record also revealed that it was the agency's policy to afford remedial training and an opportunity to correct behavior before removing candidates from the training program. The record indicated that the policy was followed with respect to White comparatives, but was not followed in complainant's case. The agency was ordered to, among other things, offer complainant reinstatement into the next training program, with back pay.

b. Utah Cases
    i. *Strebel v. Roosevelt City Police Department*, 2010 WL 5140490 (D. Utah 2010)
        1. Former city police officer brought claims of alleged discrimination based on disability and gender. She also brought a retaliation claim because, she claimed, the Defendant police department failed to assign her hours as a result of her discrimination complaints. The District Court granted the Defendant's motion for summary judgment as to the creation of a hostile work environment based on gender and disability discrimination, as the harassment was deemed not severe and pervasive. The Court denied the Defendant's motion for summary judgment as to discrimination and retaliation. The Court held that there were the following disputed issues of fact precluding summary judgment: (1) whether the Plaintiff qualified as a person with a disability under the ADA; (2)

whether running and jumping were "essential elements" of the Plaintiff's job description; and (3) whether the failure to schedule the Plaintiff amounted to a "constructive" discharge.

ii. *Teeter v. Lofthouse Foods*, 691 F.Supp.2d 1314 (D. Utah 2010)
    1. Employee brought action claiming that he was terminated because of his hepatitis C, in violation of the ADA. The District Court held that hepatitis C did not substantially limit the employee's major life activities. As a result, the employee was not "disabled" under the terms of the ADA. In addition, the Court held that there was no evidence that any person involved in the decision to terminate the employee at the Defendant company had any knowledge of the employee's illness or his course of treatment. (NB: This decision does not make mention of the ADAAA. It draws heavily on the U.S. Supreme Court's decision in *Toyota Motor Mfg. KY v. Williams*. Under the ADAAA's more liberal construction of "disability," a diagnosis of hepatitis C might be construed as a disability.)

iii. *James v. Frank's Westates Services, Inc.*, 2010 WL 3981835 (D. Utah 2010)
    1. Female employees brought suit against their employer and its president, alleging that the president sexually harassed them. They asserted causes of action under Title VII for creating a hostile work environment, negligent training, supervision and retention, and for retaliation. They also asserted a cause of action under Utah law for intentional infliction of emotional distress. The District Court held that the Plaintiffs' vicarious liability claim precluded pursuing an alternate theory based on negligent training, retention and supervision, and that it did not have authority to hear their unexhauseted retaliation claim. The Court denied the Defendant's motion for summary judgment regarding the following issues: 91) creation of a hostile work environment; (2) Actual tangible employment action taken against one plaintiff; (3) Constructive tangible employment action taken against two other plaintiffs; (4) whether plaintiffs unreasonably failed to take advantage of preventive or corrective opportunities to address their complaints; and (5) plaintiffs' intentional infliction of emotional distress claims.

DISCRIMINATION LAW
OVERVIEW

I. Sources of Anti-Discrimination Law
  a. Federal Sources
    i. Age Discrimination
      1. Statutes
        a. The Age Discrimination Act of 1975
          i. Prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance
          ii. Permits the use of certain age distinctions and factors other than age that meet the Act's requirements
          iii. Enforced by the U.S. Department of Labor Civil Rights Center
        b. The Age Discrimination in Employment Act of 1967 (ADEA)
          i. Protects certain applicants and employees 40 years of age and older from discrimination on the basis of age in hiring, promotion, discharge, compensation, or terms, conditions or privileges of employment
          ii. Enforced by the U.S. Department of Labor Equal Employment Opportunity Commission
        c. Section 188 of the Workforce Investment Act of 1998 (WIA)
          i. Prohibits discrimination against applicants, employees and participants in WIA Title I-financially assisted programs and activities, and programs that are part of the One-Stop system, on the ground of age
          ii. WIA also prohibits discrimination on the grounds of race, color, religion, sex, national origin, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I-financially assisted program or activity
          iii. Enforced by the U.S. Department of Labor Civil Rights Center
      2. Regulations
        a. 29 CFR Part 37 – Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act (WIA)

b. 29 CFR Pat 1625 – A Discrimination in Employment Act (Interpretations)
c. 29 CFR Part 1626 – Age Discrimination Act (Procedures)

ii. Disability
1. Statutes
a. Section 503 of the Rehabilitation Act of 1973
i. Prohibits federal contractors and subcontractors from discriminating against and requires affirmative action for qualified individuals with disabilities in all aspects of employment
ii. Section 504 prohibits discrimination on the basis of disability in programs and activities that receive federal financial assistance and in federally conducted programs
iii. Enforced by the Office of Federal Contract Compliance Programs (OFCCP)
b. Title I of the Americans with Disabilities Act (ADA)
i. Prohibits employers of 15 or more workers, employment agencies, and labor organizations of 15 or more workers from discriminating against qualified individuals with disabilities
c. Title II of the Americans with Disabilities Act (ADA)
i. Prohibits state and local governments from discriminating against qualified individuals with disabilities in programs, activities, and services.
d. The Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA)
i. Prohibits discrimination against and requires affirmative action for qualified special disabled veterans, as well as other categories of veterans
ii. Enforced by the Office of Federal Contract Compliance Programs (OFCCP)
e. Section 188 of the Workforce Investment Act of 1998 (WIA)
i. Prohibits discrimination against qualified individuals with disabilities who are applicants, employees, and participants in WIA Title I-financially assisted programs

and activities, and programs that are part of the One-Stop system

ii. Enforced by the U.S. Department of Labor Civil Rights Center

2. Regulations
    a. 29 CFR Part 32 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving or Benefiting from Federal Financial Assistance
    b. 29 CFR Part 33 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor
    c. 29 CFR Part 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services
    d. 29 CFR Part 37 – Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA)
    e. 29 CFR Part 1630 – Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act (ADA)
    f. 41 CFR Part 60-250 – Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans and Veterans of the Vietnam Era
    g. 41 CFR Part 60-741 – Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities
    h. 41 CFR Part 60-742 – Procedures for Complaints/Charges of Employment Discrimination Based on Disability Filed Against Employers Holding Government Contracts and Subcontracts

iii. Ethnic/National Origin, Color, Race, Religion & Sex Discrimination
    1. Statutes
        a. Executive Order 11246
            i. Prohibits covered federal contractors and subcontractors from discriminating on the basis of race, color, religion, sex or national origin
            ii. Requires affirmative action to ensure equal employment opportunity without regard to those factors

iii. Enforced by the Office of Federal Contract Compliance Programs (OFCCP)

b. Title VII of the Civil Rights Act of 1964
   i. Prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex or national origin
   ii. Enforced by the Equal Employment Opportunity Commission (EEOC)

c. Title VI of the Civil Rights Act of 1964
   i. Prohibits discrimination on the basis of race, color, or natural origin in programs and activities that receive federal financial assistance
   ii. Enforced by the U.S. Department of Labor Civil Rights Center

d. Title IX of the Education Amendments of 1972
   i. Prohibits discrimination on the basis of sex in educational programs and activities that receive federal financial assistance
   ii. Enforced by the U.S. department of Labor Civil Rights Center

e. Section 188 of the Workforce Investment Act of 1998 (WIA)
   i. Prohibits discrimination against applicants, employees and participants in WIA Title I-financially assisted programs and activities, and programs that are part of the On-Stop system, on the grounds of race, color, religion, sex, and national origin
   ii. Enforced by the U.S. Department of Labor Civil Rights Center

f. National Apprenticeship Act of 1937
   i. Apprenticeship programs registered with the Department of Labor, and state apprenticeship programs registered with recognized state apprenticeship agencies, are prohibited from discriminating, and required to take affirmative action in apprenticeship programs, on the bases of race, color, religion, national origin and sex
   ii. Enforced by the Apprenticeship Training and Employer Labor Services

2. Regulations

a. 29 CFR Part 30 – Equal Opportunity in Apprenticeship and Training
b. 29 CFR Part 31 – Nondiscrimination in Federally Assisted Programs of the Department of Labor (Effectuation of Title VI of the Civil Rights Act of 1964)
c. 29 CFR Part 37 – Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA)
d. 29 CFR Part 1604 – Guidelines on Discrimination Because of Sex
e. 29 CFR Part 1605 – Guidelines on Discrimination Because of Religion
f. 29 CFR Part 1606 – Guidelines on Discrimination Because of National Origin
g. 41 CFR Chapter 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor

iv. Federal Financial Assistance Programs
1. Statutes
a. Title VI of the Civil Rights Act of 1964
i. Prohibits discrimination on the basis of race, color, or national origin for programs or activities receiving federal financial assistance
ii. Enforced by the U.S. Department of Labor Civil Rights Center
b. Section 504 of the Rehabilitation Act of 1973
i. Programs receiving federal financial assistance are prohibited from discrimination against qualified individuals with disabilities
ii. Enforced by the U.S. Department of Labor Civil Rights Center
c. Age Discrimination Act
i. Programs receiving federal financial assistance are prohibited from discrimination on the basis of age
ii. Enforced by the U.S. Department of Labor Civil Rights Center
d. Title IX of the Education Amendments of 1972
i. Education programs of activities that receive federal financial assistance are prohibited from employment discrimination on the basis of sex

ii. Enforced by the U.S. Department of Labor Civil Rights Center

e. Section 188 of the Workforce Investment Act of 1998 (WIA)
   i. Protects applicants, employees, and participants in any WIA Title I-financially assisted program or activity, and in programs and activities that are part of the One-Stop system
   ii. Enforced by the U.S. Department of Labor Civil Rights Center

2. Regulations
   a. 29 CFR Part 31 – Nondiscrimination in Federally Assisted Programs of the Department of Labor (Effectuation of Title VI of the Civil Rights Act of 1964)
   b. 29 CFR Part 32 – Nondiscrimination on the Basis of Handicap in Programs of Activities Receiving or Benefiting from Federal Financial Assistance
   c. 29 CFR Part 37 – Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA)

v. Veterans
   1. Statutes
      a. Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA)
         i. Prohibits discrimination and requires federal contractors and subcontractors to take affirmative action to employ and advance in employment qualified Vietnam era veterans, special disabled veterans, recently separated veterans, and veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized
         ii. Enforced by the Veterans' Employment and Training Service (VETS)
      b. Uniformed Services Employment and Reemployment Rights Act (USERRA)
         i. Provides rights and responsibilities for military reservists and National Guard members called to active duty
   2. Regulations
      a. 41 CFR Part 60-250 – Affirmative Action and Nondiscrimination Obligations of Contractors and

Subcontractors Regarding Special Disabled Veterans and Veterans of the Vietnam Era

b. 41 CFR Part 61-250 – Annual Report from Federal Contractors

vi. Immigration

1. Statutes

a. Title VII of the Civil Rights Act of 1964

i. Prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color or national origin

ii. Enforced by the Equal Employment Opportunity Commission (EEOC)

b. Executive Order 11246

i. Prohibits covered federal contractors and subcontractors from discriminating on the basis of national origin, as well as race, color, religion, and sex

ii. Requires affirmative action to ensure equal employment opportunity without regard to national origin, race, color, religion, and sex

iii. Enforced by the Office of Federal Contract Compliance Programs (OFCCP)

c. Immigration and Nationality Act

i. Prohibits employers, when hiring, discharging, or recruiting or referring for a fee, from discriminating because of national origin against U.S. citizens, U.S. national, and authorized aliens or discriminating because of citizenship status against U.S. citizens, U.S. nationals, and the following classes of aliens with work authorizations:

1. Permanent residents
2. Temporary residents (that is, students who have gone through the legalization program)
3. Refugees
4. Asylees

d. Section 188 of the Workforce Investment Act of 1998 (WIA)

i. Prohibits discrimination against applicants, employees and participants in WIA Title I-financially assisted programs and activities, and programs that are part of the One-Stop system, on the basis of national origin

ii. Enforced by the U.S. Department of Labor Civil Rights Center

2. Regulations
    a. 28 CFR Part 44 – Unfair Immigration-related Employment Practices
    b. 28 CFR Part 68 – Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens, Unfair Immigration Practices and Document Fraud
    c. 29 CFR Part 37 – Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act (WIA)
    d. 29 CFR 1606 – Guidelines on Discrimination Because of National Origin
    e. 41 CFR Chapter 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor